SUPREME COURT, U. S.
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No. 77-399

In the

Supreme Court of the United States

OCTOBER TERM, 1976

Wilbur McDonald,

Petitioner,

vs.

State of Illinois, City of Chicago, County of Cook, Edward V. Hanrahan, Bernard M. Carey, Joseph Woods, Richard Elrod, Department of Corrections of Cook County, Daniel Weil, James Rochford, James Conlisk, William Arnos and Gerald Saternos,

Respondents.

On Petition For A Writ Of Certiorari To
The Court Of Appeals For The Seventh Circuit

BRIEF FOR RESPONDENTS COUNTY OF COOK, EDWARD V. HANRAHAN, BERNARD M. CAREY, JOSEPH WOODS, RICHARD ELROD, DEPARTMENT OF CORRECTIONS OF COOK COUNTY and DANIEL WEIL IN OPPOSITION.

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OPINIONS BELOW

The opinion of the District Court (App. A herein) is unreported. The opinion of the Court of Appeals for the Seventh Circuit, appended to Petitioner's Brief as

appendix A, contains several important typographical errors. The corrected appellate decision has not yet been published.

JURISDICTION

The jurisdictional requisites are adequately set forth in the Petition.

QUESTIONS PRESENTED

I. Does the complaint state a claim upon which relief may be granted as to any of these respondents?

II. Are defendants Hanrahan, Carey, Woods and Elrod immune from this civil damage action for acts within the scope of their authority?

III. Does 28 U.S.C. 1331 afford the Petitioner any remedy above and beyond those contained in 42 U.S.C. 1983?

IV. Is the issue of the constitutionality of Ch. 37 § 439.8 *Ill. Rev. Stat.* before this court on review?

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The constitutional provisions and statutes involved are adequately set forth in the Petition except that Chap. 37 §439.8 *Ill. Rev. Stat.* is not before this court on review.

STATEMENT OF THE CASE

Petitioner's recitation of the statement of the case is substantially correct except that under Ch. 37 §4398 *Ill. Rev. Stat.* the limit of recovery for the wrongful imprisonment is approximately $5,000 per year in custody, not the $3,000 stated by petitioner.

ARGUMENT

I.

THE COMPLAINT FAILS TO STATE A CLAIM UPON WHICH RELIEF MAY BE GRANTED.

The gist of the plaintiff's complaint is that because he was disbelieved by a jury in a murder trial he was thereby, *ipso facto,* denied various constitutionally protected rights, privileges or immunities. That simply is not and never has been the law. In essence, the plaintiff suggests that he was denied due process and therefore properly has this action. Due process requires only that these defendants afford this plaintiff that process which is legally due to him. If he receives that process the law has been met and he has no claim.

Nowhere in the United States or Illinois constitutions is there any requirement that the innocent prevail. Contrariwise, it is common-place for the known and admitted guilty to go free for a variety of reasons. While the system attempts to do substantial justice to all, there can be no guarantee that the guilty go to jail and the innocent go free. Guidelines are established by the courts and by statutes. Those which are legally binding on the system are the process which is due to the criminal defendant. The accused must be given an opportunity to meet the charges, present evidence and a multitude of other rights. But when those requirements have been met, or have been held to have been met by the courts, that is all that the system, manned by human beings, can do. When there is an absolute method of determining guilt, which is always correct, to permit less may deny due process, but such is not our present fortune.

Neither the various constitutions nor state and federal laws require or guarantee that only guilty persons be found guilty. That is the sought after result, to be sure, but it is neither mandated nor promised. It is obvious that a failure to do that which is not required cannot state a claim for relief under either 28 U.S.C. 1331 or 1334.

This court has long recognized the impossibility of providing every litigant a perfect trial. *Grannis* v. *Ordean,* 234 U.S. 385 (1914). So long as society must utilize human judges, attorneys, witnesses, litigants and jurors we will have to live with something less than the ideal. *Sproles* v. *Binford,* 286 U.S. 374 (1932) teaches that to make scientific precision a constitutional requirement would be to subject the state to intolerable supervision which would be hostile to the principles of our government and wholly beyond the protection contemplated by the 14th Amendment. *Powell* v. *Alabama,* 287 U.S. 45 (1932) held that the basic elements of the constitutional requirement of due process are notice and a hearing before a legally competent tribunal having jurisdiction of the case. This principle was further described in *Frank* v. *Mangum,* 237 U.S. 309 (1915), wherein the Court held that "due process of law" does not mean that the operations of state government shall be conducted without error or fault in any particular case but only that the defendant's fundamental rights shall not be taken from him arbitrarily or without the right to be heard according to the usual course of law in such cases. Similarly, due process does not provide review of mere error in jury verdicts. *Lyons* v. *Oklahoma,* 322 U.S. 596 (1944). To the same effect is *Townsend* v. *Burke* (1947) 334 U.S. 736, which found that an erroneous judgment of a court in a criminal case, based

on a scrupulous and severe search for the truth, may yet amount to due process of law. *Donnelly* v. *DeChristoforo,* 416 U.S. 637 (1974) held that not even every trial error which might call for the application of an appellate court's supervisory powers necessarily demonstrates a failure to observe that fundamental fairness which is essential to the concept of justice.

Due process is satisfied when the defendant is present in court and is convicted after having been fairly advised of the charges and after a fair trial held in accordance with constitutional procedural safeguards, *Frisbie* v. *Collins,* 342 U.S. 519 (1952), or more simply stated, when he has had a fair opportunity to defend against the state charges. *Chambers* v. *Mississippi,* 410 U.S. 284 (1973). This court declared in *McGautha* v. *California,* 402 U.S. 183 (1971),

> "[T]he federal Constitution . . . does not guarantee trial procedures that are best of all worlds, or that accord with the most enlightened ideas of students of the infant science of criminology, or even those that measure up to the individual predilections of members of This Court. The Constitution requires no more than that trials be fairly conducted and that guaranteed rights of defendants be scrupulously respected." 402 U.S. at 221

Recently, this Court concluded that the Fourteenth Amendment's due process clause does not *ex proprio vigore* extend to a person a right to be free of injury whenever the state may be characterized as the tortfeasor. That is, not every legally cognizable injury which may have been inflicted by a state official acting under "color of law" establishes a violation of the Fourteenth Amendment. *Paul* v. *Davis,* 424 U.S. 693 (1976), reh. den., 425 U.S. 985. Even more pointed is

the holding that the Fourteenth Amendment does not guarantee that all decisions by state officials will be correct. *Lavine* v. *Milne,* 424 U.S. 577 (1976).

It has been the law of this land since 1873 that "due process of law" means in the due course of legal proceedings, according to those rules and forms which have been established for the protection of private rights. *Rees* v. *City of Watertown,* 86 U.S. 107 (1873) Petitioner herein has absolutely failed to point out any deficiency in the state criminal proceedings which would constitute a denial of due process. Rather, he argues that the erroneous jury verdict, *ipso facto,* constitutes a due process violation. That is not the law. He even admits due process compliance.

II.

RESPONDENTS HANRAHAN, CAREY, WOODS AND ELROD ARE ABSOLUTELY IMMUNE FROM THIS CIVIL DAMAGE SUIT.

Beyond the obvious deficiencies in the pleadings which fail to demonstrate that State's Attorneys Hanrahan and Carey personally participated in the Petitioner's prosecution,[1] it is well settled law that their mere status as elected officials fails to state a claim upon which relief may be granted. Had they personally participated in the prosecution, they would be immune from suit. *Imbler* v. *Pachtman,* 424 U.S. 409 (1976).

Two Sheriffs of Cook County, Illinois are named as defendants: Joseph I. Woods and Richard J. Elrod. No-

[1] Edward V.. Hanrahan was the elected State's Attorney of Cook County, Illinois from December 3, 1968 to and including December 4, 1972,. Bernard Carey is the present State's Attorney of Cook County, Illinois. He entered office on December 5, 1972.

where in the complaint are they alleged to have personally participated in any specific acts which allegedly caused the plaintiff injury. *Respondeat superior* is not an available doctrine by which to hold these defendants liable. It is now well established that personal participation must be alleged or the complaint is defective. *Rizzo* v. *Goode,* 423 U.S. 423 U.S. 362 (1976).

Ch. 125, §203(a) and (b), *Ill. Rev. Stat.,* sets forth statutory duties upon defendants Woods and Elrod to establish, operate and have jurisdiction over the Cook County Department of Corrections—the physical plant and the inmates therein. The plaintiff admits in his complaint he was arrested by the Chicago Police Department (paragraph 8, Complaint) and it is not alleged but assumed for the sake of this motion that he was then housed in the Cook County Department of Corrections, Division I. Such incarceration is by court order, a mittimus. Ch. 125, §16, *Ill. Rev. Stat.,* states:

> "The disobedience of any sheriff to perform the command of any writ, warrant, process, order, or decree legally issued to him shall be deemed a contempt of the court that issued the same. . . ."

The state law further prevails upon these defendants:

> "[T]he warden of the Jail shall receive and confine in such jail, until discharged by due course of law all persons who are committed to such jail by a competent authority." Ch. 75, §4, *Ill. Rev. Stat.*

Defendants Woods, Weil and Elrod had no discretion detaining the plaintiff and cannot now be liable for complying with their statutory duties. A public official acting pursuant to a court order, valid on its face, (here a mittimus) is immune from civil damage suits. *Pierson* v. *Ray,* 386 U.S. 547 (1967).

III.

28 U.S.C. 1331 AFFORDS THE PETITIONER NO REMEDIES ABOVE AND BEYOND THOSE CONTAINED IN 42 U.S.C. 1983.

The Cook County Department of Corrections is an assemblage of bricks, wash basins, steel bars and toilets: it neither acts nor fails to act and, of course, has not been accused of having committed any acts at all for rather obvious reasons. It is not a proper party defendant. The same goes for the plaintiff's claim against the County of Cook. First these defendants assert that the allegations contained in the complaint do not constitute a claim of denial of due process. But assuming, *arguendo*, to the contrary, these defendants are not proper parties defendant as they are not "persons."

Although plaintiff's Complaint is somewhat ambiguous as to the jurisdictional base for his action against the County of Cook, he apparently claims that jurisdiction is based under 28 U.S.C. §1343(a) (for a violation of 42 U.S.C. §1981) and under 28 U.S.C. §1331(a) (for violations of his rights under the Eighth and Fourteenth Amendments).

A county is not suable under 42 U.S.C. §1983. Plaintiff alternately claims that independent jurisdiction exists by virtue of 28 U.S.C §1331(a) for a violation of his rights under the Fourteenth Amendment. Plaintiff has cited below *City of Kenosha* v. *Bruno*, 412 U.S. 507 (1973) in support of his position. In *City of Kenosha* v. *Bruno*, the plaintiff sued two municipalities alleging jurisdiction under 28 U.S.C. §§1331 and 1343. Concerning the availability of jurisdiction under §1331, the Supreme Court stated:

> "We have had the benefit of neither briefs, arguments, nor explicit consideration by the District Court of the . . . availability of §1331 jurisdiction in view of the state of the record below." 93 S.Ct. at 2227.

The Court did not squarely decide the jurisdictional contention put forward by plaintiff here.

It is submitted that no jurisdiction should exist against a municipality under 28 U.S.C. §1331 for a violation of an individual's civil rights. The Seventh Circuit has agreed with this position in its decision below.

Prior to the enactment of the 1871 Civil Rights Act, 42 U.S.C. §1983, no remedy existed in the federal courts by which an individual could sue for damages for a violation of his civil rights. Certainly the Fourteenth Amendment and others created "constitutional rights;" but they did not contain remedies. Thus, no remedy or right to sue for monetary damages existed prior to the date upon which Congress, acting pursuant to Section 5 of the Fourteenth Amendment, enacted 42 U.S.C. §1983.

The legislative history of §1983 has been examined on numerous occasions by the Supreme Court. Most significantly, in *Monroe* v. *Pape*, 365 U.S. 167 (1961) the Court considered and rejected the contention that Congress had intended to bring municipal corporations within the ambit of §1983.

It is clear that the only means by which an individual may sue to secure monetary damages for a deprivation of his constitutional rights is when the Congress specifically creates by legislation such a remedy. *Moreover, 28 U.S.C. §1331 (a) does not create a remedy.* Rather, it is merely jurisdictional, providing a forum where remedies previously established by Congress can be adjudicated.

To this date, Congress has not seen fit to hold municipal corporations liable when an individual's rights are violated. If a liability does not exist under existing legislation

(in this case §1983), a plaintiff cannot circumvent Congress by fashioning a remedy from a purely jurisdictional enactment. A similar attempt was made by other plaintiffs in an attempt to recover attorneys' fees in "public interest" litigation where they were successful. They argued that while no federal statute permitted it, it was proper to do so under the federal doctrine that permits the fashioning of appropriate remedies. The Court rejected that argument: *Alyeska Pipeline Service Co.* v. *Wilderness Society*, 421 U.S. 240 (1975)

Even assuming as a general proposition of law that the County of Cook can be held liable for alleged violations of an individual's rights, it is apparent that under the allegations in his Complaint the County cannot be held accountable to this plaintiff.

The single thread by which plaintiff is attempting to hold the County liable is an unpleaded, *inter linea* assumption that acts of certain county officers (Hanrahan, Carey, Elrod, Weil and Woods) deprived Plaintiff of his rights. Implicit in that claim is the contention that the County is liable under a *respondeat superior* theory. In that contention, plaintiff ignores the legal relationship between the County and the individual defendants, as well as the facts that the individuals are not agents of the County and the County is not their "superior."

Since December 1, 1969, the operation of the Cook County Jail has been the responsibility of the Cook County Department of Corrections. *Ill. Rev. Stat.*, Ch. 125, §201 *et seq.* The Board of said Department consists of five members, (§204), and it has the power and duty "to operate and have jurisdiction over the county jail." [§203 (a)]. The executive director of the Department is selected by the Sheriff from names submitted by the Board, and he can be removed only by the Board itself. Clearly, the

director is not the agent of the County of Cook because the County has no control over his activities. Thus, the County is not a "superior" to the director.

Similarly, guards at the Cook County Jail are not agents of the County of Cook. Rather, they are appointed, promoted, removed, and disciplined pursuant to regulations established by the Cook County Police and Corrections Merit Board, *Ill. Rev. Stat.*, Ch. 125, §52, *et seq.* Guards, of course, are also responsible to the Sheriff. However, there is no statutory authority for the proposition that the County of Cook has any authority to control the actions of a guard, the warden, or the director at the Department of Corrections. Thus, the County cannot be held accountable for those persons' acts.

Finally, it should be noted that the County has no control over the actions of Sheriffs Elrod and Woods and State's Attorneys Carey and Hanrahan. Those positions are established by the 1970 Illinois Constitution, and they are elected by the citizens of the County. They are responsible to those citizens, and perform within statutory guidelines. The County of Cook has no statutory authority to control the manner in which the Sheriff or the State's Attorney perform their statutory duties. Thus, they cannot be considered agents of the County, and the County cannot be said to be responsible for their actions.

It is submitted that if the County of Cook has neither the power to employ Elrod, Woods, Weil, Carey or Hanrahan, nor the power to control their actions, then the County cannot be held legally responsible for their actions or inactions. As such, plaintiff's Complaint fails to state a claim upon which relief can be granted against the County of Cook.

The Seventh Circuit's holding that the County of Cook cannot be made liable via 28 U.S.C. 1331 is entirely consistent with the applicable state law which is contained in Chapter 85, Section 2-109, *Ill. Rev. Stat.* which states:

> "A local public entity is not liable for an injury resulting from an act or omission of its employee where the employee is not liable."

IV.

THE CONSTITUTIONALITY OF CHAPTER 37, SECTION 439.8, OF THE ILLINOIS REVISED STATUTES IS NOT BEFORE THIS COURT.

Plaintiff attempts to litigate for the first time on appeal the constitutionality of Chapter 37, Section 439.8 of the Illinois Revised Statutes. The constitutionality of this statute was never raised by the plaintiff in his complaint. Paragraph 20 of the complaint states that a claim has been filed in the Illinois Court of Claims pursuant to this statute.[2] Paragraph 21 of the complaint simply states the pleader's feelings that the limits prescribed by the statute are arbitrary. Paragraph 25 concludes the complaint by stating that limiting the plaintiff's recovery to the statutory rate defeats "overriding policy" and "due process considerations." The complaint is devoid of any request for declaratory relief and the complaint lacks a jurisdictional statement including 28 U.S.C. 2201. The complaint does not request a declaration concerning the constitutionality of the state statute. This would tend to explain why the District Court failed to rule upon the constitutionality of the statute. Similarly, no relief pursuant to 28 U.S.C. 2281 was sought. Hence, plaintiff's request for an advisory opinion concerning the statute ought properly be denied.

[2] Giving rise to these respondents' defense below of prior pending state claim.

CONCLUSION

These Respondents submit that the issues raised by Petitioner's appeal are insubstantial and do not justify plenary review by the Court.

Respectfully submitted,

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APPENDIX A

IN THE UNITED STATES DISTRICT COURT
For The Northern District Of Illinois
Eastern Division

WILBUR McDONALD,

Plaintiff,

vs.

STATE OF ILLINOIS, et. al.,

Defendants.

No. 75 C 2755

MEMORANDUM OF DECISION

This is a civil rights action brought by plaintiff pursuant to the provisions of 42 U.S.C. Section 1983. Jurisdiction in this Court is invoked under the provisions of 42 U.S.C. Section 1343. Plaintiff also alleges jurisdiction under the federal question provisions of 28 U.S.C. Section 1331. All of the parties named defendants herein have pleaded to plaintiff's complaint by way of motions for summary judgment or to dismiss the complaint. The case is presently before the Court for decision on the defendants' motions.

A reading of the complaint reveals the following allegations: Plaintiff was arrested by Chicago police officers on July 11, 1970, and was thereafter tried and convicted of murder by a jury on August 17, 1971. The trial took place in the Circuit Court of Cook County, Illinois, Criminal Division. In August 1973, one Lester Harrison confessed to the murder for which plaintiff had been convicted. Plaintiff was subsequently discharged after the Cook County States' Attorney had found sufficient information demonstrating the truth of Harrison's confession. Approximately one year later plaintiff was granted a full pardon "based on innocence" by the Governor of Illinois.

As a result of this conviction and incarceration, the complaint states that plaintiff was deprived of his freedom, of normal human society, and of all the usual and ordinary pursuits and benefits of life as a free man. The complaint further alleges numerous deprivations of rights and other wrongs perpetrated by the various defendants.

The complaint recites that plaintiff has filed an action in the Illinois Court of Claims for damages pursuant to Illinois Statutory provision (Ill. Rev. Stat. Ch. 37, Sec. 439.8(c)). The complaint maintains that the above-cited Illinois statute violates due process in that it places an arbitrary limit upon the value of an innocent person's wrongful incarceration. The complaint further asserts the curious, if not unsupportable, legal position that when a person is convicted and incarcerated for an offense of which he is in fact innocent, government officials "must have been responsible therefor; res ipsa loquitur. Upon such an allegation and proof of wrongful conviction and incarceration of an innocent man, defendants must establish that they were not responsible for said miscarriage of justice and for the resulting damages to plaintiff." (Par. 24, Complaint). The prayer seeks five million dollars in damages.

Defendant Conlisk, a former Superintendent of the Chicago Police Department, and defendant Rochford, the present Superintendent, have filed motions for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure. Both defendants have attached affidavits to their motion in which they assert that they exercised no direct supervision over certain other named defendants in this action, and, in effect, deny any personal involvement in the activities which gave rise to the plaintiff's complaint.

The Court notes at the outset that summary judgment under Rule 56(c) is to be applied with caution. *International Association of M. & A.W. Dist. No. 8* v. *Clark Company*, 471 F. 2d 694, 697 (7th Cir. 1972). It is incumbent that this Court examine all proffered materials

to determine whether there is a genuine issue of material fact to be tried. *Hazeltine Research, Inc.* v. *General Electric Co.*, 183 F. 2d 3 (7th Cir.1950). The granting of summary judgment, while a drastic remedy, is a wholesome one where applicable to the circumstances, and is never warranted except on a clear showing that no genuine issue as to any material fact remains for trial. *Mintz* v. *Mathers Fund, Inc.*, 463 F. 2d 495, 498 (7th Cir. 1972).

A reading of the complaint reveals that the names of Conlisk and Rochford are not even mentioned in any paragraph of the complaint. It appears that their only connection with this lawsuit is the fact that they are named as defendants in the caption of the case. In light of this failure to allege facts pertaining to these defendants, and in light of the requirement of an allegation of personal involvement on the part of public officials for the maintenance of a respondeat superior theory of liability, *Adams* v. *Pate*, 445 F. 2d 105 (7th Cir. 1971), the Court finds that the pleadings, memoranda, and affidavits present no genuine issue as to any material fact. Accordingly, the motion for summary judgment of defendants Conlisk and Rochford is granted.

Defendant Hanrahan, the former Cook County, Illinois, State's Attorney, and defendant Carey, the present State's Attorney, have filed a motion to dismiss the complaint for failure to state a claim upon which relief can be granted pursuant to Rule 12 (b)(6), F.R.C.P. A complaint, of course, should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. *Conley* v. *Gibson*, 355 U.S. 41, 45, 46 (1957). For purposes of entertaining a motion to dismiss, the Court treats the allegations of the complaint as true. *Gardner* v. *Toilet Goods Association*, 387 U.S. 167, 172 (1967).

It is a fundamental principal that a prosecuting attorney, acting within the scope of his office as provided

by statute, enjoys the same cloak of immunity from civil liability as a judge. See *Cawley* v. *Warren,* 216 F. 2d 74 (7th Cir. 1954). Inasmuch as the complaint fails to allege that defendants Hanrahan and Carey somehow acted outside the scope of their authority as set forth in *Ill. Rev. Stat.* Ch. 14, Sec. 5 and its statutory predecessor, and since the rule of judicial immunity precludes the possibility of holding these defendants liable for the prosecution of the plaintiff, the motion of defendants Carey and Hanrahan to dismiss is hereby granted.

Defendant Woods, the former Sheriff of Cook County, defendant Elrod, the present Sheriff, and defendant Weil, the former Superintendent of the Cook County Department of Corrections, have also filed motions under Rule 12 (b)(6) to dismiss the complaint. The Court notes that there must be an allegation of defendants' personal involvement in the alleged deprivation of plaintiff's federally protected rights. *Adams* v. *Pate, supra,* in order to impose vicarious liability on those defendants under the theory of *respondeat superior.* Furthermore, Illinois law provides for the duties of the office of Sheriff (*Ill. Rev. Stat.* Ch. 125) and the duties of the Warden (*Ill. Rev. Stat.,* Ch. 75), and it is a well recognized principle that a public official, acting pursuant to a court order, is immune from civil damage suits. See *Robinson* v. *McCorkle,* 462 F. 2d 111 (3rd Cir. 1972), and cases cited therein. In the instant case, the complaint contains no allegations as to defendants Woods and Elrod, and in light of the foregoing reasons, their motion to dismiss is hereby granted.

As to defendant Weil, the complaint alleges that this defendant refused to allow plaintiff's attorney to photograph the plaintiff shortly after his arrest in order to corroborate testimony that the plaintiff had been beaten by unknown assailants, accounting for his presence near the scene of the homicide. The Court finds that such an allegation, even if proven, is insufficient to state a claim upon which relief can be granted. Defendant Weil, as

Superintendent of the Cook County Department of Corrections, is vested with authority to promulgate such rules and regulations as he deemed proper for the administration of the institutions over which he exercised control. As such, a corrections official's refusal to allow plaintiff's attorney to photograph the plaintiff is not a deprivation of right which rises to such a dimension as to be cognizable under the Civil Rights Act of 1871 Accordingly, as to defendant Weil, the motion to dismiss is hereby granted.

Defendants Arnos and Saternos of the Chicago Police Department have also presented a motion to dismiss based on their assertion that the action is barred by the statute of limitations (*Ill. Rev. Stat.* Chapter 83, Sec. 15). Although this Court makes no ruling on whether the applicable statute of limitations bars this action as to these defendants, the Court does find that the allegations of the complaint are insufficient to state a claim against Arnos and Saternos. The complaint alleges that these defendants refused to "discuss facts they knew prior to their testimony," and that they failed to properly report their initial encounter with the plaintiff. The Court finds these allegations are not sufficient to state a claim upon which relief can be granted. Accordingly, as to defendants Arnos and Saternos, the motion to dismiss is hereby granted.

Also named as defendants in this action are the State of Illinois, the City of Chicago, the County of Cook and the Department of Corrections of Cook County, Illinois. All of these defendants are governmental units for which the various individually named defendants acted as agents or executives. In light of this Court's decision that the motions for summary judgment or to dismiss the complaint should be decided in favor of the various named individual defendants, and in light of the fact that the governmental unit defendants could only be held liable if the individual defendants could be held liable, the motion to dismiss the above named governmental unit defendants is hereby granted.

In conclusion, the Court notes that the entire thrust of plaintiff's complaint is a pleading of wrongful conviction. Plaintiff seems to assert that the fact of the existence of a conviction of an innocent person creates a cause of action under the Civil Rights Act of 1871, or creates a cognizable constitutional deprivation under federal question jurisdiction, and that merely because the fact of wrongful conviction exists, the named defendants must adduce proof that they were not legally responsible for the conviction and resulting damage. Although deeply sympathetic to plaintiff's unfortunate conviction, the Court finds plaintiff's theory legally untenable. Accordingly, for the reasons expressed herein, the complaint must be and hereby is dismissed.

/s/ William J. Lynch
Judge, United States District Court

Dated: Jan. 22, 1976